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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

FRANCIS JANCIK, individually  
and on behalf of others similarly  
situated,

Plaintiffs,

v.

REDBOX AUTOMATED  
RETAIL, LLC, a Delaware limited  
liability company; VERIZON AND  
REDBOX DIGITAL  
ENTERTAINMENT SERVICES,  
LLC, a Delaware limited liability  
company; and DOES 1 through 10,  
inclusive,

Defendants.

**CASE NO. SACV13-01387-DOC(RNBx)**

**CLASS ACTION**

**SECOND AMENDED COMPLAINT  
FOR:**

- (1) VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12101, *et seq.*;
- (2) VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, Cal. Civ. Code § 51, *et seq.*;
- (3) VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT, Cal. Civ. Code §§ 54-54.3;
- (4) VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT, Cal. Civ. Code § 1750 *et seq.*;
- (5) VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- (6) VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff, FRANCIS JANCIK, on behalf of himself and others similarly  
2 situated (hereinafter "Plaintiff" or "Mr. Jancik"), hereby files this Complaint against  
3 Defendants REDBOX AUTOMATED RETAIL, LLC a Delaware corporation  
4 (hereinafter "Redbox" or "Defendant"); VERIZON AND REDBOX DIGITAL  
5 ENTERTAINMENT SERVICES, LLC, a Delaware corporation (hereinafter  
6 "Verizon" or "Defendant"); and DOES 1 through 10, inclusive (hereinafter  
7 collectively referred to as "Defendants"). Plaintiff is informed and believes, and on  
8 the basis of that information and belief alleges, as follows:

9 **NATURE OF THE CASE**

10 1. This action seeks to put an end to systemic civil rights violations  
11 committed by Defendants against deaf and hard of hearing individuals in California  
12 and nationwide. Plaintiff alleges that Defendants have failed to provide equal access  
13 to their DVD and Blu-ray (hereafter "DVD") and video streaming services by  
14 refusing to make available closed captioned text for the deaf and hard of hearing—a  
15 feature that is necessary for such individuals to understand the audio portion of the  
16 video content.

17 2. This action further seeks to put an end to Defendants'  
18 misrepresentations and false statements that their DVD and online video streaming  
19 content is closed captioned for the hearing impaired and/or contains English  
20 subtitles.

21 3. Redbox DVD rentals account for approximately 34% of the DVD rental  
22 market nationwide, and Redbox has surpassed 2 billion DVD rentals nationally.  
23 Defendant Redbox operates a network of over 42,000 automated video rental kiosks  
24 at 34,600 locations, including grocery and convenience stores, mass merchant  
25 retailers, drugstores, and restaurants in California and through-out the United States.  
26 Among other services, these kiosks allow customers to browse, select, rent and/or  
27 purchase DVDs. Customers also have the option of using Redbox's website to  
28 reserve DVDs for pick up at a kiosk location.

1           4.     “Redbox Instant” is a service offered by Defendant Redbox and  
2 Defendant Verizon as part of a joint venture between Defendant Redbox and  
3 Verizon Communications, Inc.

4           5.     Through Defendants’ website, [www.redboxinstant.com](http://www.redboxinstant.com), consumers are  
5 provided immediate access to new-release DVD movie rentals through Redbox  
6 kiosks nationwide and instant access to popular entertainment content using the  
7 devices they prefer with a “Redbox Instant” subscription and video on-demand  
8 streaming service for \$8.00 per month.<sup>1</sup> All consumers, both subscribers and non-  
9 subscribers alike, can also use Defendants’ website to select new releases available  
10 for purchase or rental, or reserve DVDs to pick up at one of Defendant Redbox’s  
11 kiosk locations.<sup>2</sup>

12           6.     Approximately 36 million Americans are deaf or hard of hearing.  
13 Many of these individuals require closed captioning to meaningfully access the  
14 audio component of television and video content. Just as buildings without ramps  
15 bar people who use wheelchairs, video content without captions excludes deaf and  
16 hard of hearing individuals. Closed captioning is a viewer activated system that  
17 displays text on, for instance, television programming, or DVD movies. (This is  
18 different from open captioning, which is automatically displayed for everyone, such  
19 as subtitles in foreign language movies.) With closed captioning, deaf and hard of  
20 hearing individuals have the opportunity to enjoy movies and television shows by  
21 reading the captioned text. With closed captioning, these individuals can also watch  
22 videos together with family and friends, whether or not deaf or hard of hearing.

23           7.     Despite repeated requests by Plaintiff to Defendants to provide DVD  
24 and video steaming content with closed captioning, Defendants have failed to do so.  
25 By not providing DVD and video streaming content with captioning, Defendants are  
26 creating barriers to full integration, independent living, and equal opportunity for

27 <sup>1</sup> See <http://about.redboxinstant.com/learn/about-redbox-instant-by-verizon/>, accessed December 21, 2013.

28 <sup>2</sup> Press release dated December 12, 2012, Redbox Instant by Verizon Unveils Details of Disc + Digital Move Service, available online at <http://about.redboxinstant.com/media/partnership-press-release>, accessed December 21, 2013.

1 persons with disabilities, increasing the sense of isolation and stigma that the  
2 Americans with Disabilities Act ("ADA") was meant to redress.

3 8. The failure of Defendants to provide equal access to millions of deaf  
4 and hard of hearing individuals violates the mandate of the ADA to provide "full and  
5 equal enjoyment" of a public accommodation's goods, services, facilities, and  
6 privileges, including "place[s] of exhibition and entertainment," "place[s] of  
7 recreation," "sales or rental establishment[s]," and "service establishments."  
8 28 C.F.R. § 36.201(a); 42 U.S.C. §12181(7). Because the kiosks and Defendants'  
9 internet websites are "places of public accommodation," denial of equal access  
10 violates the ADA. Remedying these violations is critical to the ADA's goal of  
11 providing people with disabilities the same access that others take for granted.  
12 Accordingly, Plaintiff, on behalf of himself and members of the putative classes  
13 and/or subclasses, seeks injunctive and declaratory relief to ensure that deaf and hard  
14 of hearing individuals have equal access to Defendants' services.

15 9. Furthermore, despite Defendants' failure to provide equal access to deaf  
16 and hard of hearing individuals, Defendants have advertised, and continue to falsely  
17 advertise, that their video content is closed captioned and/or contains English  
18 subtitles, when in fact, it is not. Defendants' misrepresentations and false statements  
19 appear onscreen at their thousands of kiosk locations in California and nationwide  
20 and on their websites. These misrepresentations specifically target disabled persons,  
21 the deaf and hearing impaired. Furthermore, at all relevant times, Defendants knew  
22 or should have known that their DVD and online video streaming content lacked  
23 closed captioning and/or English subtitles, yet made and continue to make false  
24 statements to the contrary. To this day, Defendants have taken no meaningful steps  
25 to clear up Plaintiff's and members of the putative classes' confusion based on  
26 Defendants' misrepresentations.

27 ///

28 ///

**PARTIES**

**A. Plaintiff Francis Jancik**

10. Plaintiff, Francis Jancik, is an individual over the age of eighteen (18) and is now, and at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California in the County of Orange. Mr. Jancik is deaf and a member of a protected class under the Americans with Disabilities Act, the Unruh Civil Rights Act and the California Disabled Persons Act.

11. Mr. Jancik frequently rents DVDs from Defendant Redbox using Redbox's automated kiosks. In selecting DVDs, Mr. Jancik relies on Redbox's representations that they are closed captioned and/or contain English subtitles. However, and despite Redbox's representations to the contrary, the DVDs Mr. Jancik rents frequently lack closed captioning and/or English subtitles. Mr. Jancik is harmed, inter alia, as he is denied equal access to the DVD content, is deceived and suffers economic injury based on not receiving the product or service he paid for.

12. Mr. Jancik has visited Defendant Verizon's website and is aware of the limited availability streaming videos that are closed captioned. As a deaf individual, Mr. Jancik is unable to enjoy streaming videos absent closed captioning. As a result of Defendant's failure to provide closed captioning, Plaintiff was and at all times relevant has remained deterred from patronage of Defendant Verizon's services. Accordingly, Plaintiff has never subscribed to Defendant Verizon's Redbox Instant service. He has been harmed, inter alia, by his exclusion from the service, as he feels it is unfair that he has inadequate access, which he believes to be the most competitively priced unlimited viewing option for streaming movies. If Defendant Verizon provided equal access to its Redbox Instant service, Mr. Jancik and other members of the putative classes would subscribe.

**B. Defendant Redbox Automated Retail, LLC**

13. Plaintiff is informed and believes, and based thereon alleges, that



1 Defendant Redbox is a Delaware corporation with its principal place of business at  
2 1800 114th Avenue S.E., Bellevue, Washington 98004. Defendant Redbox operates  
3 a network of automated video rental kiosks at grocery and convenience stores, mass  
4 merchant retailers, drugstores, and restaurants in California and through-out the  
5 United States. At all times relevant hereto, Defendant Redbox has transacted, and  
6 continues to transact, business throughout the State of California, including the  
7 Central District.

8 **C. Defendant Verizon and Redbox Digital Entertainment Services, LLC**

9 14. Plaintiff is informed and believes, and based thereon alleges, that  
10 Defendant Verizon is a Delaware corporation with its principal place of business at  
11 One Verizon Way, Basking Ridge, New Jersey 07920. Defendant Verizon operates  
12 a nationwide streaming business that offers its subscribers access to over 4,600 on-  
13 demand titles via the internet. At all times relevant hereto, Defendant Verizon has  
14 transacted, and continues to transact, business throughout the State of California,  
15 including the Central District.

16 **D. Defendants, Does 1 through 10, Inclusive**

17 15. Does 1 through 10, inclusive, are now, and/or at all times mentioned in  
18 this Complaint were, licensed to do business and/or actually doing business in the  
19 State of California. Plaintiff does not know the true names or capacities, whether  
20 individual, partner, or corporate, of DOES 1 through 10, inclusive, and for that  
21 reason, DOES 1 through 10 are sued under such fictitious names. Plaintiff will seek  
22 leave of court to amend this Second Amended Complaint ("SAC") to allege such  
23 names and capacities as soon as they are ascertained.

24 **E. All Defendants**

25 16. Plaintiff is informed and believes, and based upon such information and  
26 belief alleges, that Defendants, and each of them, are now and/or at all times  
27 mentioned in this SAC were in some manner legally responsible for the events,  
28 happenings and circumstances alleged in this SAC.

19. Plaintiff is informed and believes, and based upon such information and belief alleges, that Defendants, and each of them, at all times mentioned in this SAC, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this SAC.

20. This Court has subject matter jurisdiction pursuant to Title 28, United States Code, Section 1331 and Title 42, United States Code, Section 12188 for Plaintiff's claims arising under the American with Disabilities Act, Title 42, United States Code, Section 12101, *et seq.*

7

**VENUE**

22. Venue for this matter properly lies in the Central District of California under Title 28, United States Code, Sections 1391(b)-(c) and 1441(a).

23. Defendants Redbox and Verizon are registered to do business in California and have been doing business in California, including in the Central District. Defendant Redbox maintains thousands of video rental kiosks in California, including several hundred in the Central District of California. Defendant Verizon operates its nationwide streaming business on the internet in this District. Defendants are subject to personal jurisdiction in this judicial district as the conduct described herein occurred in whole or in part in this judicial district as directed toward Plaintiff and the members of the below-described classes and/or subclasses.

**BACKGROUND**

**A. Defendants' Failure to Provide Deaf And Hard Of Hearing Individuals With Meaningful Access to Their DVD and/or Video Streaming Content.**

24. Redbox DVD rentals account for approximately 34% of the DVD rental market nationwide. Reports estimate Redbox's customers rent 62 million-plus DVDs each month from its more than 42,000 kiosks. Redbox kiosks are self-service automated machines that allow customers to rent and return DVDs by using a touch screen interface. Redbox also allows customers to reserve DVDs at its kiosks locations via the internet using its website at <http://www.redbox.com/>.

25. "Redbox Instant" offers consumers "a high value subscription package that combines unlimited streaming of thousands of popular movies, including titles from premium network EPIX, with four one-night credits per month for the latest movie releases on DVD at Redbox kiosks."<sup>3</sup> In addition, all consumers, both subscribers and non-subscribers alike, can use Defendants' website to select new

<sup>3</sup> Press release dated December 12, 2012, Redbox Instant by Verizon Unveils Details of Disc + Digital Move Service, available online at <http://about.redboxinstant.com/media/partnership-press-release>, accessed December 21, 2013.



1 releases available for purchase or rental or reserve DVDs to pick up at one of  
2 Defendant Redbox's kiosk locations.

3       26. Therefore, by subscribing to redboxinstant.com, customers are provided  
4 with four coupons a month for DVD rentals which can only be used and redeemed  
5 and the physical kiosks locations. Redboxinstant.com also allows customers of  
6 Defendant Redbox and/or Defendant Verizon to perform functions related to the  
7 "brick and mortar" kiosk locations. For example, through redboxinstant.com, com,  
8 consumers can browse through movies and other items available at the kiosk  
9 locations, find the locations nearest to them and check on the availability of a  
10 particular movie at kiosk locations nearby and reserve a DVD title to pick up at  
11 kiosk location.

12       27. In addition, "Redbox Instant" subscribers can log into their accounts  
13 using Defendants' redboxinstant.com website to check on the number of credits they  
14 have available. These credits can only be redeemed at the physical kiosk locations;  
15 they cannot be used for streaming rental on the reboxinstant.com website.

16       28. The overwhelming majority of the content available at Defendants'  
17 kiosks and on their websites is not closed captioned and is therefore inaccessible to  
18 Plaintiff and members of the putative classes and/or subclasses.

19       29. Defendants acknowledge as much on their redboxinstant.com website  
20 stating,

21       We also are continuing to expand the library of movies that have closed  
22 captioning available for customers. To find out if a title is close-  
23 captioned, just click its poster. If (CC) appears at the end of the  
24 synopsis, that title is close-captioned.<sup>4</sup>

25       30. Because of the way Defendants' kiosks and websites are set up, it is  
26 difficult, if not impossible, to determine the exact percentage of closed captioned  
27 content available from Defendants. For example, while customers can search for

28 <sup>4</sup>Redbox Instant By Verizon, Help Center, *Does Redbox Instant by Verizon Offer Closed Captioning (CC)?*, available  
at: [http://redboxinstant.custhelp.com/app/answers/detail/a\\_id/224](http://redboxinstant.custhelp.com/app/answers/detail/a_id/224), accessed Aug. 30, 2013.

1 titles based on whether they are formatted as Blu-Ray disks, DVDs, in high  
2 definition or in standard definition, there is no feature that allows customers to  
3 search for titles that are closed captioned.

4 31. In addition, titles that are closed captioned are hard to locate because  
5 captioned films are not identified in the same manner as non-captioned films. One  
6 must comb through the kiosk touchscreens and/or Defendants' websites and open  
7 each movie icon to determine if closed captioning is available. Since closed  
8 captions are generally not available, this exercise is time consuming and ineffective.

9 32. Defendants therefore have designed, constructed, implemented and  
10 maintained policies, practices, procedures that provide accommodations, advantages,  
11 facilities, privileges and services to customers that contain access barriers to the deaf  
12 and hard of hearing. In so doing, Defendants' conduct specifically target and  
13 discriminate against Plaintiff and other deaf and hard of hearing individuals. These  
14 barriers deny full and equal access to Plaintiff and other deaf and hard of hearing  
15 individuals who would otherwise be able to fully and equally enjoy Defendant's  
16 benefits and services.

17 33. Over the course of the past year,<sup>5</sup> Plaintiff repeatedly notified  
18 Defendants of the unlawful accessibility barriers related to Defendants' goods and  
19 services. Plaintiff further repeatedly requested that Defendants make closed  
20 captioned video content available in order to accommodate his disability and afford  
21 him full and equal access under the law. Plaintiff alleges his requests for  
22 accommodation, the provision of closed captioned video content, imposes no undue  
23 financial or administrative burden on Defendants. Nevertheless, Defendants have  
24 failed and refused to accommodate Plaintiff. As a result, Plaintiff is effectively  
25 excluded from the benefits of the goods, services, privileges and advantages offered  
26 by Defendants.

27  
28 <sup>5</sup> Among others, Plaintiff provided notice to Defendant on August 4, 2013.

34. In failing and refusing to make reasonable and necessary modifications to their policies, procedures and practices, Defendant wrongfully and unlawfully denied Plaintiff, and other deaf and hard of hearing individuals, with equal access to the benefits of the goods, services, privileges and advantages offered by Defendants with the knowledge of the effect of on disabled persons.

**B. Defendants' Misrepresentations And False Statements Regarding Closed Captioning and/or availability of English Subtitles**

35. Defendants have made, and continue to make, misrepresentations regarding the closed captioning and/or availability of English subtitles related to their DVD and/or video streaming content. Defendants voluntarily represent, advertise and promote that DVD and video streaming content available at their kiosks and on their websites is closed captioned and/or contains English subtitles, when, in fact, it is not.

36. The photographs below show Defendants' misrepresentations and false statements concerning the DVD, "Assault on Wall Street," provided at Defendants' kiosk locations. The photograph on the left reveals Defendants' representations on the kiosk touchscreen that the DVD is closed captioned (Closed Captioned is both presented in text, and through the use of the symbol: CC) and contains English subtitles. The photograph on the right shows the DVD menu and reveals that the DVD is neither closed captioned, nor does it contain English subtitles.

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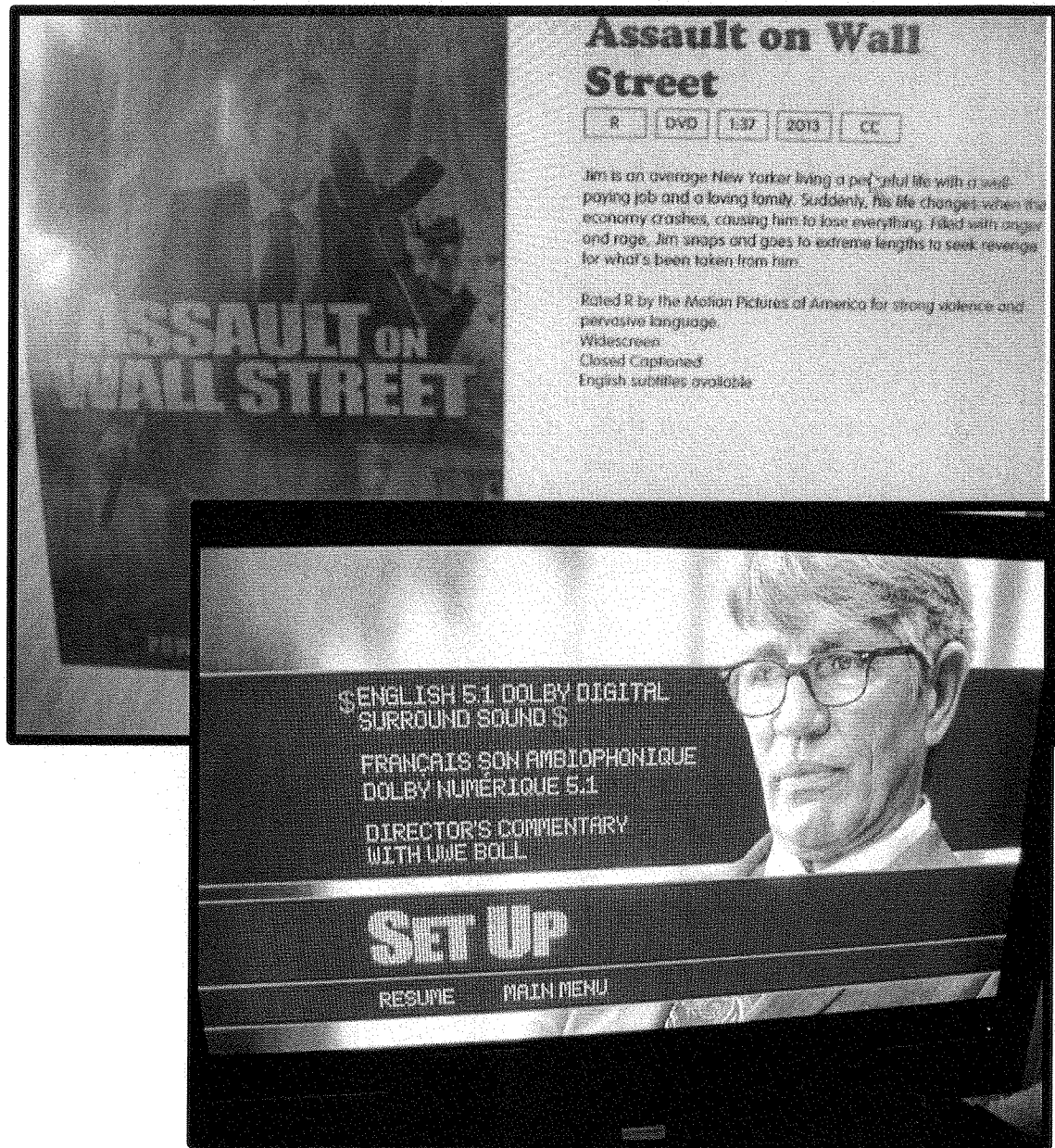
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37. Defendants make similar misrepresentations and false statements that Defendants' streaming videos contain closed captions and/or English subtitles when, in fact, they do not.

38. Defendants' business practice of advertising and marketing their DVD and online video streaming content as containing closed captions and/or English subtitles when they do not, constitutes "unfair, deceptive, untrue or misleading

1 advertising” under the California Business and Professions Code, Sections 17200 *et.*  
2 *seq.*, and 17500 *et. seq.*

3 39. Plaintiff and other reasonable consumers must and do rely on  
4 companies such as Defendants’ to honestly state the characteristics and particular  
5 standards of their goods and services. Defendants intend and know that consumers  
6 rely upon their statements made on labels, advertisements and on their websites in  
7 making their purchase decisions. Such reliance by consumers is reasonable because  
8 companies are prohibited from making false or misleading statements on their  
9 products’ labels under the law.

10 40. Defendants’ representations that their DVD and online video streaming  
11 content contains closed captions and/or English subtitles when they do not, are  
12 misleading and/or fail to disclose material facts. Defendants knew, or should have  
13 known, or were reckless in making their misrepresentations, that their conduct  
14 targeted disabled consumers, the deaf and hard of hearing. Defendants knew or  
15 should have known that their representations of standards, qualities, characteristics,  
16 grade, affirmations of fact, and promises regarding the goods and services were  
17 likely to deceive consumers and disabled consumers in particular into believing they  
18 were purchasing goods and services that had the qualities and attributes, which they  
19 did not possess.

20 41. Plaintiff has been renting movies from Defendants for over a year.  
21 Because Plaintiff is deaf, he relies on closed captioned text and/or English subtitles  
22 to understand the audio portion of the video content. Thus, Plaintiff’s purchases are  
23 based upon Defendants’ advertisements, labeling and representations including, but  
24 not limited to, their representations that the movies are closed captioned and/or  
25 contain English subtitles. Had Plaintiff known the movies he was selecting were not  
26 closed captioned and did not contain English subtitles, he would not have rented  
27 and/or purchased them. As a result, Plaintiff has lost money and did not receive the  
28 product he bargained for.



1        42. After renting a number of movies from Defendants, which were  
2 advertised and labeled as closed captioned and/or containing English subtitles, only  
3 to learn they were not, Plaintiff began calling Defendants and requesting that the  
4 false advertising be removed and that the closed captioning and/or English subtitles  
5 be added.

6        43. Each time Plaintiff called, he was assured that either the false  
7 advertising would be removed or the closed captioning would be added. However,  
8 despite Defendants' assurance, Defendants took no corrective action.

9        44. On or around August 4, 2013, Plaintiff rented the DVD, "The  
10 Adventures of Mickey Matson: Copperhead Treasure," from Defendants. The  
11 information provided on the touchscreen at the kiosk claimed the DVD was both  
12 closed captioned and contained English subtitles. However, when Plaintiff returned  
13 home and started the movie, neither closed captioning nor English subtitles were  
14 available.

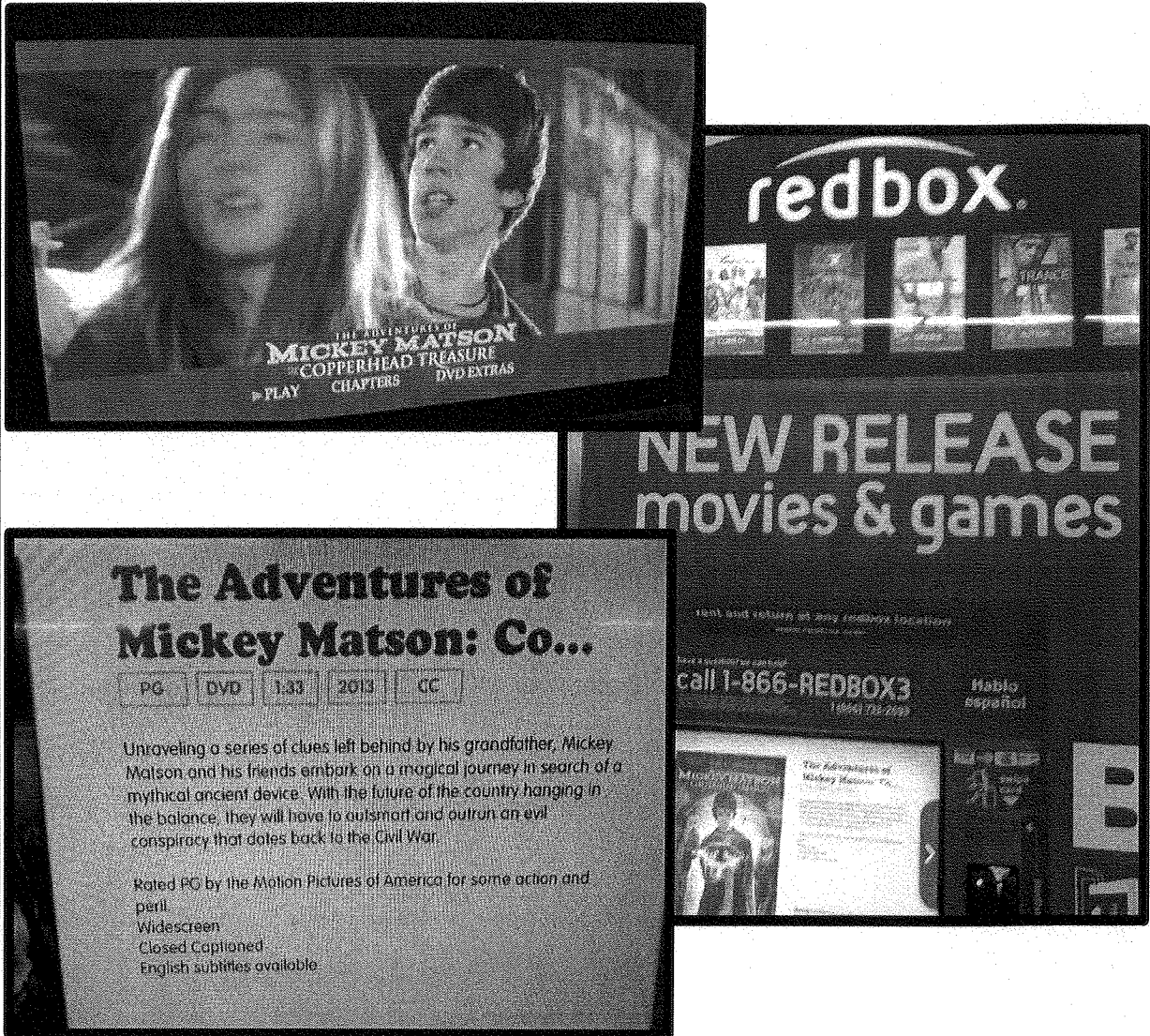
15        45. Retaining the services of a video relay interpreter, Plaintiff called  
16 Defendants to report the false and misleading advertising. During the call,  
17 Defendants assured Plaintiff that either the false advertising would be removed or  
18 the DVD would be replaced with another that in fact contained captions and/or  
19 English subtitles.

20        46. Approximately two weeks later, on or around August 17, 2013, Plaintiff  
21 noticed that information at Defendants' kiosk claimed the DVD, "The Adventures of  
22 Mickey Matson: Copperhead Treasure," was closed captioned and contained English  
23 subtitles. Assuming Defendants had replaced the prior version that lacked captions  
24 and subtitles with one that had them, Plaintiff again selected and rented the DVD.  
25 However, upon returning home to watch the DVD, Plaintiff learned that the DVD  
26 still lacked captions and subtitles.

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47. The photographs below were taken on or around August 17, 2013, and show Defendants' representations that the DVD was both closed captioned and contained English subtitles.



### CLASS ACTION ALLEGATIONS

48. Plaintiff brings this suit as a class action on behalf of himself and on behalf of others similarly situated pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Class may be expanded or



1 narrowed. Plaintiff brings this suit on behalf of a proposed nation-wide class and a  
 2 California Sub-Class (collectively "the Classes") defined as follows:

3 **The Disabled Persons Class**

4 All deaf or hard of hearing persons residing in the United States during the  
 5 time period permitted by applicable statutes of limitations and continuing until  
 6 present.

7 **The California Disabled Persons Sub-Class**

8 All deaf or hard of hearing persons residing in the State of California during  
 9 the time period permitted by applicable statutes of limitations and continuing  
 10 until present.

11 **The California False Advertising Class**

12 All deaf or hard of hearing persons residing in California who rented and/or  
 13 purchased DVD/Blu-Ray and/or video streaming content from Defendants  
 14 during the time period permitted by applicable statutes of limitations and  
 15 continuing until present which Defendant represented to have closed  
 16 captioning and/or English subtitles but which did not actually provide these  
 17 features.

18 **The California Unfair Competition Law Class**

- 19 a. All deaf or hard of hearing persons residing in the State of California  
 20 who have been or are being denied equal access to Defendants'  
 21 DVD/Blu-Ray and/or video streaming content during the time  
 22 period permitted by the applicable statute of limitations and  
 23 continuing until present;
- 24 b. All deaf or hard of hearing persons residing in California who rented  
 25 an/or purchased DVD/Blu-Ray and/or video streaming content from  
 26 Defendants during the time period permitted by the applicable  
 27 statute of limitations and continuing until present which Defendant  
 28 represented to have closed captioning but which did not actually

1 provide this feature.

2 49. Numerosity: The members of the Classes are so numerous that joinder  
3 of all members is impracticable. The Classes are comprised of thousands of  
4 consumers throughout the United States and across California.

5 50. Commonality: Common questions of law and fact exist as to all  
6 members of the Classes. These common questions predominate over the questions  
7 affecting only individual members of the Classes. These common legal and factual  
8 questions include, but are not limited to, the following:

- 9 a. Whether Defendants' kiosk locations are places of public  
10 accommodation under the Americans Disabilities Act;
- 11 b. Whether Defendants' websites are places of public accommodation  
12 under the Americans Disabilities Act;
- 13 c. Whether, by failing to provide closed captioned content on their  
14 DVD and video streaming content, Defendants have discriminated  
15 against the deaf and hard of hearing on the basis of disability in the  
16 full and equal enjoyment of the goods, services, facilities, privileges,  
17 advantages, or accommodations of places of public accommodation  
18 in violation of the Americans Disabilities Act;
- 19 d. Whether Defendants have failed to provide equal access for people  
20 with disabilities to the accommodations, advantages, facilities,  
21 privileges, and services of their business establishments in Violation  
22 of the Unruh Civil Rights Act;
- 23 e. Whether Defendants have failed to provide equal access for people  
24 with disabilities to the accommodations, advantages, facilities and  
25 privileges of places of public accommodation and other places to  
26 which the public is invited in violation of the California Disabled  
27 Persons Act;
- 28 f. Whether Defendants made representations, expressly or by

1           implication, that their DVD and/or video streaming content  
2           contained closed captions when they did not;

3           g. Whether Defendants made representations, expressly or by  
4           implication, that their DVD and/or video streaming content  
5           contained English subtitles when they did not;

6           h. Whether Defendants' conduct constitutes a violation of the  
7           California Legal Remedies Act;

8           i. Whether Defendants' are liable for additional remedies pursuant to  
9           California Civil Code section 1780(b)(1);

10          j. Whether Defendants' conduct constitutes a violation of §17500, *et*  
11          *seq.*, of the *Business and Professions Code*;

12          k. Whether Defendants' conduct constitutes an unlawful business act  
13          or practice within the meaning of *Business and Professions Code*  
14          §17200;

15          l. Whether Defendants' conduct constitutes an unfair business act or  
16          practice within the meaning of *Business and Professions Code*  
17          §17200;

18          m. Whether Defendants' conduct constitutes a fraudulent business act  
19          or practice within the meaning of *Business and Professions Code*  
20          §17200;

21          n. Whether Plaintiff and members of the Class are entitled to damages,  
22          restitution, and other relief.

23          51. Typicality: Plaintiff's claims are typical of the claims of the members of  
24          the Classes as all members of the Classes are similarly affected by Defendants'  
25          wrongful conduct. Plaintiff, like other members of the Classes, were denied equal  
26          access and exposed to the same material misrepresentations. Plaintiff is advancing  
27          the same legal theories on behalf of himself and all absent class members.

28          52. Adequacy of Representation: Plaintiff's claims are made in a



1 representative capacity on behalf of the other members of the Classes. Plaintiff has  
2 no interests antagonistic to the interests of the other members of the proposed  
3 Classes and is subject to no unique defenses. Plaintiff is committed to the vigorous  
4 prosecution of this action and has retained competent counsel experienced in the  
5 prosecution of class actions. Accordingly, Plaintiff is an adequate representative of  
6 the proposed Classes and will fairly and adequately protect the interests of the  
7 Classes.

8 53. Superiority: A class action is superior to other available means for the  
9 fair and efficient adjudication of this dispute. Joinder of all members is  
10 impracticable. The damages suffered by each individual member of the Classes  
11 likely will be relatively small, especially given the relatively small cost of the DVD  
12 rental and streaming services at issue and the burden and expense of individual  
13 prosecution of the complex litigation necessitated by Defendants' conduct. Thus, it  
14 would be virtually impossible for members of the Classes individually to effectively  
15 redress the wrongs done to them. Moreover, even if members of the Classes could  
16 afford individual actions, it would still not be preferable to class-wide litigation. The  
17 burden of individual litigation on the court system would be significant.  
18 Individualized actions present the potential for inconsistent or contradictory  
19 judgments. By contrast, a class action presents far fewer management difficulties  
20 and provides the benefits of single adjudication, economies of scale, and  
21 comprehensive supervision by a single court.

22 54. This suit may be maintained as a class action under Fed. R. Civ. Pro.  
23 23(b)(2) because Defendants have acted, and/or refused to act, on grounds generally  
24 applicable to the Classes, thereby making appropriate final injunctive relief.  
25 Specifically, injunctive relief is necessary and appropriate to require Defendants to:

- 26 a. Discontinue its unfair business practices;  
27 b. Undertake an immediate public information campaign to inform  
28 members of the proposed Classes as to their conduct as alleged in

1 this Complaint; and

- 2 c. Correct any erroneous impression consumers may have obtained  
3 concerning the nature, characteristics, or qualities of the DVD rental  
4 and streaming services provided by Defendants, including without  
5 limitation, the placement of corrective marketing, advertising,  
6 promoting and labeling, and providing written notice to the public.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

9 **(On Behalf of Plaintiff, the Disabled Person Class and the**

10 **California Disabled Person Subclass, Against all Defendants)**

11 55. Plaintiff hereby incorporates by reference each and every one of the  
12 allegations contained in the preceding paragraphs as if the same were fully set forth  
13 herein.

14 56. Title III of the ADA provides that “places of public accommodation”  
15 may not discriminate against people with disabilities. Specifically, it directs that:

16 No individual shall be discriminated against on the basis of disability in  
17 the full and equal enjoyment of the goods, services, facilities, privileges,  
18 advantages, or accommodations of any place of public accommodation  
by any person who owns... or operates a place of public  
accommodation.

19 42 U.S.C. §§ 12101 *et. seq.*

20 57. Plaintiff is deaf and is therefore disabled and a member of a protected  
21 class under the ADA.

22 58. Defendant Redbox operates places of public accommodation as defined  
23 by Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181(7)(E)-(F),  
24 because Redbox DVD kiosks are “sales or rental establishments” and “service  
25 establishments.”

26 59. Defendant Verizon operates places of public accommodation as defined  
27 by Title III of the ADA, 42 U.S.C. § 12181(7)(C), (I), (E)-(F), because “Redbox  
28 Instant” is a “place of exhibition and entertainment,” “sales or rental establishment,”

1 “service establishment” and “place of recreation.” Moreover, Defendant Verizon’s  
2 website provides DVD and streaming video rental services for both Defendant  
3 Redbox and Defendant Verizon. As described above, redboxinstant.com allows  
4 customers to perform functions related to the physical kiosk locations, including,  
5 among others, browsing through DVD titles, finding nearby kiosk locations,  
6 confirming availability of and reserving DVD titles to pick up at kiosk locations and  
7 providing coupons which can only be redeemed at kiosk locations.

8 60. Title III prohibits places of public accommodation from denying  
9 disabled individuals “the opportunity ... to participate in or benefit from the goods,  
10 services, facilities, privileges, advantages, or accommodations of an entity” and from  
11 providing service that is not as effective as what is provided to others. 42 U.S.C.  
12 § 12182(b)(1)(A)(i-iii).

13 61. Defendants have discriminated against Plaintiff and other deaf and hard  
14 of hearing individuals by denying them the opportunity to participate programs or  
15 services and by providing a service that is not as effective as what is provided to  
16 others. 42 U.S.C. § 12182(b)(1)(A)(i-iii).

17 62. Because Plaintiff is deaf, he relies on closed captioning to enjoy DVDs.  
18 Defendant Redbox is Plaintiff’s preferred DVD rental service because of its  
19 convenient and inexpensive DVD rental terms and because of the proximity of a  
20 several of its rental establishments to Plaintiff’s home. Therefore, Plaintiff  
21 frequently attempts to rent closed captioned DVDs from Defendant Redbox.  
22 However, because Defendant Redbox provides closed captions on only a limited  
23 number of its DVD titles, Plaintiff does not have full and equal enjoyment of  
24 Defendant Redbox’s DVD rental service, in violation of Title III of the ADA.  
25 Further, because Plaintiff relies on Defendant Redbox for DVD rental services,  
26 Plaintiff will continue to suffer this unequal access.

27 63. Defendant Verizon offers what Plaintiff believes to be the most  
28 competitively priced unlimited viewing option for streaming movies. However,

1 because Plaintiff is deaf, he is only able to fully enjoy video streaming services with  
2 closed captions. Plaintiff has visited Defendant Verizon's website and is aware that  
3 closed captions are provided on only a limited number of its streaming titles and  
4 DVDs. Therefore, Defendant Verizon does not offer Plaintiff the same "unlimited  
5 access" or full and equal enjoyment it offers hearing individuals, in violation of Title  
6 III of the ADA. As a result, of this unequal access based on Plaintiff's disability,  
7 Plaintiff has been and remains deterred from patronizing Defendant Verizon's rental  
8 service.

9 64. Discrimination under Title III also includes the "failure to make  
10 reasonable modifications in policies, practices, or procedures, when such  
11 modifications are necessary to afford such goods, services, facilities, privileges,  
12 advantages, or accommodations to individuals with disabilities, unless the entity can  
13 demonstrate that making such modifications would fundamentally alter the nature of  
14 such goods, services, facilities, privileges, advantages, or accommodations." *Id.*  
15 § 12182(b)(2)(A)(ii).

16 65. Modifying its policies and providing closed captions as auxiliary aids  
17 and services to make Defendant Redbox's DVDs accessible to Plaintiff and other  
18 deaf and hard of hearing individuals is reasonable and would not fundamentally alter  
19 the nature of Redbox's DVD rental business, nor would it pose an undue burden to  
20 this flourishing company.

21 66. Likewise, modifying its policies and providing closed captions as  
22 auxiliary aids and services to make Defendant Verizon's Redbox Instant video  
23 streaming accessible to Plaintiff and other deaf and hard of hearing individuals is  
24 reasonable would not fundamentally alter the nature of Verizon's home  
25 entertainment business, nor would it pose an undue burden to this burgeoning  
26 company.

27 67. Unless Defendants provide closed captions, Plaintiff and other deaf and  
28 hard of hearing individuals will remain effectively excluded from Defendants video

1 sale and rental services.

2 68. By failing to provide closed captioned videos Defendants, in violation  
3 of the auxiliary aids and services provision of the ADA, 42 U.S.C.  
4 § 12182(b)(2)(A)(iii), have failed to make their goods and services fully accessible  
5 to Plaintiff and other deaf and hard of hearing individuals.

6 69. Defendants' conduct constitutes an ongoing and continuous violation of  
7 the law. Defendants have failed to take any prompt and equitable steps to remedy  
8 their discriminatory conduct. Unless restrained from doing so, Defendants will  
9 continue to so violate the law. Defendants' conduct has caused, and will continue to  
10 cause, Plaintiff and members of the putative class injury. Plaintiff and members of  
11 the putative class have no adequate remedy at law for the injuries they suffer and  
12 will continue to suffer. Thus, Plaintiff and the members of the putative class are  
13 entitled to injunctive relief.

14 70. Pursuant to 42 U.S.C. §§ 2000a-3 and 12188 and the remedies,  
15 procedures, rights set forth and incorporated therein, Plaintiff and members of the  
16 putative class request relief as set forth below.

## 17 **SECOND CAUSE OF ACTION**

### 18 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

19 **(On Behalf of Plaintiff and the California Disabled Person Subclass**

20 **Against all Defendants)**

21 71. Plaintiff hereby incorporates by reference each and every one of the  
22 allegations contained in the preceding paragraphs as if the same were fully set forth  
23 herein.

24 72. The California Unruh Civil Rights Act, California Civil Code §§ 51, *et*  
25 *seq.*, guarantees equal access for people with disabilities to the accommodations,  
26 advantages, facilities, privileges, and services of all business establishments of any  
27 kind whatsoever. Defendants are systematically violating the Unruh Civil Rights  
28 Act.



1        73. Defendant Redbox's system of offering DVD rentals to the public  
2 through its system of kiosks at thousands of locations throughout California is a  
3 "business establishment" within the meaning of the Unruh Civil Rights Act. Redbox  
4 generates hundreds of millions of dollars in revenue from the rental of goods at its  
5 kiosks throughout California. Because Defendant Redbox provides captions on only  
6 a limited number of DVDs, the goods, services, advantages, accommodations,  
7 facilities, and privileges accorded to other persons by Defendant Redbox are not  
8 fully and equally available to deaf and hard of hearing individuals in violation of the  
9 Unruh Civil Rights Act.

10        74. Defendant Verizon's system of offering live streaming video content  
11 through the internet is a "business establishment" within the meaning of the Unruh  
12 Civil Rights Act. See *National Federation of Blind v. Target Corp.*, 582 F.Supp.2d  
13 1185 (N.D. Cal. 2007) (Unruh Civil Rights Act and California Disabled Persons Act  
14 applied to retailer's website as a business establishment and accommodation,  
15 advantage, facility, and privilege of a place of public accommodation.). Because  
16 Defendant Verizon provides captions on only a limited number of its Redbox Instant  
17 titles, the goods, services, advantages, accommodations, facilities, and privileges  
18 accorded to other persons by Defendant Verizon are not fully and equally available  
19 to deaf and hard of hearing individuals in violation of the Unruh Civil Rights Act.

20        75. Plaintiff is informed and believes, and based upon such information and  
21 belief alleges, that Defendants, and each of them, have engaged in intentional  
22 discrimination, including but not limited to:

- 23            a. designing, constructing, implementing and maintaining policies,  
24                practices, procedures and barriers that discriminate against Plaintiff  
25                and the other members of the putative class with knowledge of such  
26                discrimination; and/or

- 1 b. designing, constructing, implementing and maintaining policies,  
2 practices, procedures and barriers that are sufficiently intuitive  
3 and/or obvious as to constitute intentional conduct; and/or  
4 c. failing to act in the face of the substantial likelihood of harm to  
5 Plaintiff's and the other putative class members' rights protected  
6 under federal and state law.

7 76. Defendants are additionally violating California Civil Code § 51, in that  
8 the conduct alleged herein constitutes a violation of various provisions of the ADA,  
9 42 U.S.C. §§ 12101, *et seq.*, as set forth above. California Civil Code § 51(f)  
10 provides that a violation of the right of any individual under the ADA shall also  
11 constitute a violation of the Unruh Civil Rights Act.

12 77. The actions of Defendants were and are in violation of the Unruh Civil  
13 Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiff and members  
14 of the putative class are entitled to injunctive relief remedying the discrimination.  
15 Unless the Court enjoins Defendants from continuing to engage in these unlawful  
16 practices, Plaintiff and members of the putative class will continue to suffer  
17 irreparable harm.

18 78. Plaintiff and members of the putative class are also entitled to statutory  
19 minimum damages pursuant to California Civil Code § 52 for each and every  
20 offense.

21 79. Pursuant to California Civil Code § 52 and the remedies, procedures,  
22 and rights set forth and incorporated therein, Plaintiff and the other members of the  
23 putative class also request relief as described below.

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**THIRD CAUSE OF ACTION**

**VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT**

**(On Behalf of Plaintiff and the California Disabled Person Subclass,**

**Against all Defendants)**

80. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

81. The California Disabled Persons Act, California Civil Code §§ 54-54.3, guarantees full and equal access for people with disabilities to all accommodations, advantages, facilities, and privileges of “all places of public accommodation” and “other places to which the general public is invited.”

82. Redbox’s DVD rental kiosks throughout California constitute “places of public accommodation” or “other places to which the general public is invited.” Because Defendant Redbox provides captions on only a limited number of its DVDs, the advantages, facilities, and privileges accorded to other persons by Defendant Redbox are not fully and equally available to deaf and hard of hearing individuals.

83. Defendant Verizon’s live streaming video website constitutes a “place[] of public accommodation” or “other place[] to which the general public is invited.” See *National Federation of Blind v. Target Corp.*, 582 F.Supp.2d 1185 (N.D. Cal. 2007) (finding Unruh Civil Rights Act and California Disabled Persons Act applied to retailer’s website as a business establishment and accommodation, advantage, facility, and privilege of a place of public accommodation.). Because Defendant Verizon provides captions on only a limited number of its Redbox Instant titles, the advantages, facilities, and privileges accorded to other persons by Defendant Verizon are not fully and equally available to deaf and hard of hearing individuals.

84. Defendants are also violating California Civil Code §§ 54-54.3, in that their actions are a violation of the ADA. Any violation of the ADA is also a violation of California Civil Code § 54.1.

85. As a result of Defendants' wrongful conduct, Plaintiff and members of the putative class are entitled to statutory minimum damages under California Civil Code §§ 54.3 and 55 for each offense.

86. Pursuant to California Civil Code §§ 54.3 and 55 and the remedies, procedures, and rights set forth and incorporated therein, Plaintiff and the other members of the putative class also request relief as described below.

#### **FOURTH CAUSE OF ACTION**

#### **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

**(On Behalf of Plaintiff and the California False Advertising Class,**

**Against all Defendants)**

87. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

88. The California Consumers Legal Remedies Act ("CLRA"), California Civil Code §§ 1750, *et seq.*, was designed and enacted "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." California Civil Code §1760. The CLRA should be liberally construed and applied to promote theses underlying purposes. *Id.*

89. Defendant Redbox's DVDs and Defendant Verizon's streaming movies are "goods" as defined by the CLRA, California Civil Code § 1761(a).

90. Plaintiff and members of the putative class are "consumers" as defined by the CLRA, California Civil Code § 1761(d).

91. Defendants' conduct as alleged herein constitutes a "transaction" within the meaning of the CLRA, California Civil Code §1761(e).

92. Defendants have engaged in unfair and deceptive practices to the detriment of Plaintiff and members of the putative class. Plaintiff and members of the putative class have suffered harm as a proximate result of the violations of law and wrongful conduct of Defendants as alleged in this Complaint.

1        93. Defendants have violated and continue to violate, the CLRA in the  
2 following respects, among others:

- 3            a. In violation of California Civil Code § 1770(a)(2), Defendants have  
4            misrepresented the certification of their DVD and video streaming  
5            content as closed captioned;  
6            b. In violation of California Civil Code § 1770(a)(5), Defendants have  
7            represented that their DVD and video streaming content have  
8            characteristics, uses and benefits they do not have;  
9            c. In violation of California Civil Code § 1770(a)(7), Defendants have  
10           represented that their DVD and video streaming content are of a  
11           particular standard or particular style when they are not; and  
12           d. In violation of California Civil Code § 1770(a)(9), Defendants have  
13           advertised their DVD and video streaming content with an intent not to  
14           sell them as advertised.

15        94. Defendants' conduct constitutes intentional misrepresentation, deceit,  
16 and concealment of a material fact known to Defendants with the intention of  
17 thereby depriving Plaintiff and members of the Classes of property or otherwise  
18 causing injury.

19        95. Unless Defendants are permanently enjoined from continuing to engage  
20 in such violations of the CLRA, other consumers will be damaged by their acts and  
21 practices in the same way as Plaintiff and members of the putative class have.

22        96. Plaintiff and members of the putative class further request this Court to  
23 enjoin Defendants from continuing to employ the unlawful methods, acts and  
24 practices alleged, pursuant to California Civil Code § 1780(a)(2).

25        97. Pursuant to California Civil Code § 1782, Plaintiff gave Defendants  
26 notice by letters dated September 5, 2013, by certified mail of the particular  
27 violations of Civil Code § 1770. The notice requested that Defendants take  
28 appropriate actions to remedy the violations of the CLRA alleged in this complaint



1 and give notice to all affected consumers of Defendants' intent to so act.  
 2 Accordingly, Plaintiff and members of the putative class seek damages for such  
 3 deceptive practices pursuant to California Civil Code § 1782 and restitution pursuant  
 4 to Civil Code § 1780(a)(3).

5 98. Defendants' conduct was willful, fraudulent, oppressive and done in  
 6 wanton disregard for the rights of Plaintiff and members of the putative class.  
 7 Plaintiff and the putative class should therefore be awarded punitive damages against  
 8 Defendants, and each of them, in an amount to be established that is appropriate to  
 9 punish Defendants and deter others from engaging in such conduct.

10 99. Because Defendants knew that their conduct was directed at deaf and  
 11 hard of hearing individuals and have thus caused those individuals, including  
 12 Plaintiff members of the putative class, substantial damage, Plaintiff and members of  
 13 the putative class seek additional relief as disabled persons pursuant to California  
 14 Civil Code § 1780(b).

15 100. Plaintiff and members of the putative class also request the Court to  
 16 award them their costs and reasonable attorney's fees pursuant to Civil Code  
 17 § 1780(e).

18 101. Plaintiff and the other members of the putative class also request relief  
 19 as described below.

## 20 **FIFTH CAUSE OF ACTION**

### 21 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**

22 **(On Behalf of Plaintiff and the California False Advertising Class,**

23 **Against all Defendants)**

24 102. Plaintiff hereby incorporates by reference each and every one of the  
 25 allegations contained in the preceding paragraphs as if the same were fully set forth  
 26 herein.

27 103. The California False Advertising Law, California Business &  
 28 Professions Code §17500, *et seq.*, prohibits the dissemination of false or misleading

1 statements in connection with advertising.

2 104. Defendants' conduct, misrepresentations and false statements of  
3 material facts alleged in this Complaint constitute false advertising in violation of  
4 California Business & Professions Code §17500, *et seq.*

5 105. At all times relevant hereto, Defendants' advertising regarding the  
6 closed captioning and/or subtitling of their DVD and online video streaming content  
7 was untrue, misleading and likely to deceive the public and/or has deceived the  
8 Plaintiff and consumers.

9 106. In making and disseminating the misrepresentations and false  
10 statements alleged herein, Defendants knew or should have known that the  
11 statements were untrue or misleading.

12 107. Defendants engaged in the false and/or misleading advertising,  
13 marketing and labeling alleged herein with intent to directly or indirectly induce and  
14 deceive deaf and hard of hearing individuals into purchasing or renting their DVDs  
15 and online video streaming content.

16 108. As alleged in this Complaint, a result of Defendants' misrepresentations  
17 and false statements, Plaintiff and members of the Class rented or purchased a  
18 product or service that they otherwise would not have rented or purchased. Thus,  
19 Plaintiff and members of the class did not receive what they paid for, and Plaintiff  
20 and the members of the class have suffered an injury in fact as a result of  
21 Defendants' misrepresentations and false statements.

22 109. Through these acts, Defendants have been able to reap unjust revenue  
23 and profit, and have unfairly acquired money from Plaintiff and the members of the  
24 class. Plaintiff requests that this Court restore this money, with interest, and enjoin  
25 Defendants from continuing to violate California Business & Professions Code  
26 §§ 17500, *et seq.*

27 110. Unless restrained and enjoined, Defendants will continue to engage in  
28 the conduct alleged in this Complaint. Accordingly, injunctive relief is appropriate.

1        111. Plaintiff and members of the class seek an order requiring Defendants  
2 to undertake a public information campaign to inform members of the class of its  
3 prior acts or practices.

4        112. Plaintiff is entitled to an award of attorneys' fees and costs in  
5 prosecuting this action against Defendants under California Code of Civil Procedure,  
6 Section 1021.5 and other applicable law in part because:

- 7            a. a successful outcome in this action will result in the enforcement of  
8            important rights affecting the public interest by maintaining the  
9            integrity of representations made concerning Defendants' goods and  
10           services;  
11           b. this action will result in a significant benefit to consumers or a large  
12           class of persons by bringing to a halt unlawful, unfair, deceptive,  
13           and misleading activity and by causing the return of ill-gotten gains  
14           obtained by Defendants;  
15           c. unless this action is prosecuted, members of a large class of persons  
16           will not recover those monies, and many consumers would not be  
17           aware that they were victimized by Defendants' wrongful acts and  
18           practices;  
19           d. unless this action is prosecuted, Defendants will continue to mislead  
20           consumers; and  
21           e. an award of attorneys' fees and costs is necessary for the prosecution  
22           of this action and will result in a benefit to each member of the  
23           Class, and consumers in general.

24        113. Plaintiff and the other members of the putative class also request relief  
25 as described below.

26 ///

27 ///

28 ///

**SIXTH CAUSE OF ACTION**

**VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW  
(On Behalf of Plaintiff and the California Unfair Competition Law Class,  
Against all Defendants)**

114. Plaintiff hereby incorporates reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

115. The California Unfair Competition Law (“UCL”) prohibits “unfair competition,” which is defined by Business and Professions Code, Section 17200 as including “any unlawful, unfair or fraudulent business act or practice . . . .”

116. Because it contains no express intent, knowledge, or negligence requirement, the UCL “imposes strict liability.” *Searle v. Wyndham International, Inc.*, 102 Cal.App.4th 1327, 1333 (2002); *see also, Community Assisting Recovery, Inc. v. Aegis Security Insurance Co.*, 92 Cal.App.4th 886 (2001); *South Bay Chevrolet v. General Motors Acceptance Corp.*, 72 Cal.App.4th 861, 877 (1999). Nor is it a “necessary to show that the defendant intended to injure anyone.” [Citation.]” *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal.App.4th 499, 520 (1997).

117. The unlawful prong of Section 17200 “embrac[es] anything that can properly be called a business practice and that at the same time is forbidden by law.” *Rubin v. Green*, 4 Cal.4th 1187, 1200 (1993) (internal quotation marks omitted). It “borrows violations of other laws and treats them as independently actionable.” *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824, 837 (2006).

118. The unfair prong of Section 17200 “provides an independent basis for relief.” *Smith v. State Farm Mutual Automobile Insurance Co.*, 93 Cal.App.4th 700, 718 (2001). “It is not necessary,” therefore, “for a business practice to be ‘unlawful’ in order to be subject to an action under the unfair competition law.” *Id.* “In general the ‘unfairness’ prong ‘has been used to enjoin deceptive or sharp practices. . . .’ [Citation.]” *South Bay Chevrolet v. General Motors Acceptance*



1 *Corp.*, 72 Cal.App.4th 861, 887 (1999).

2 119. The fraudulent prong of section 17200 “affords protection against the  
3 probability or likelihood as well as the actuality of deception or confusion.” *Payne*  
4 *v. United California Bank*, 23 Cal.App.3d 850, 856 (1972). The test is whether  
5 ““members of the public are likely to be deceived.” [Citation.]” *In re Tobacco II*  
6 *Cases*, 46 Cal.4th 298, 312 (2009). As the California Supreme Court has explained,  
7 “our concern with thwarting unfair trade practices has been such that we have  
8 consistently condemned not only those alleged unfair practices which have in fact  
9 deceived the victims, but also those which are likely to deceive them.” *Fletcher v.*  
10 *Security Pacific National Bank*, 23 Cal.3d 442, 451 (1979).

11 120. Within four year preceding the filing of this complaint, Defendants  
12 engaged in the following unlawful, unfair and fraudulent business acts and practices,  
13 among others:

- 14 a. Denying deaf and hard of hearing individuals, on the basis of their  
15 disability, full and equal enjoyment of Defendants’ goods, services,  
16 facilities, privileges, advantages, or accommodations in violation of  
17 the ADA, 42 U.S.C. §§ 12101 *et seq.*;
- 18 b. Denying deaf and hard of hearing individuals, on the basis of their  
19 disability, equal access to the accommodations, advantages,  
20 facilities, privileges, and services of Defendants’ business  
21 establishments in violation of the California Unruh Civil Rights Act,  
22 California Civil Code §§ 51, *et seq.*;
- 23 c. Denying deaf and hard of hearing individuals, on the basis of their  
24 disability, equal access to the accommodations, advantages, facilities  
25 and privileges of Defendants’ places of public accommodation in  
26 violation of the California Disabled Persons Act, California Civil  
27 Code §§ 54-54.3;
- 28 d. Engaging in unfair and deceptive business practices in violation of

the California Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*;

- e. Engaging in the false and misleading advertising, marketing and labeling of their DVD and video streaming services and content in violation of the California False and Misleading Advertising Law, California Business & Professions Code §17500, *et seq.*;
- f. Failing to comply with Federal Communication Commission (“FCC”) rules and regulations promulgated under the Twenty-First Century Communications and Video Accessibility Act of 2010;
- g. Providing to deaf and hard of hearing individuals goods and services that were not as effective as those provided to others;
- h. Creating barriers to full integration, independent living, and equal opportunity for persons with disabilities;
- i. Increasing the sense of isolation and stigma that the ADA was meant to redress;
- j. Knowingly advertising and labeling their DVD and video streaming content as closed captioned when in fact they were not such that deaf and hard of hearing consumers were in fact and/or likely to be deceived; and
- k. Failing to remove the false and misleading statements their DVD and video streaming content as closed captioned.

121. Defendants, through their acts of unfair competition, have been able to reap unjust revenue and profit, and have unfairly acquired money from Plaintiff and the members of the class. As a direct and proximate result of Defendants’ unlawful business acts and practices, Plaintiff and members of the class have suffered economic and other injuries.

122. Unless restrained and enjoined, Defendants will continue to engage in the conduct alleged in this Complaint. Accordingly, pursuant to California Business

1 & Professions Code § 17203, injunctive relief is appropriate and Plaintiff and  
2 members of the class seek a Court order enjoining Defendants from continuing to  
3 engage in the unlawful, unfair and fraudulent business practices complained of  
4 herein.

5 123. Plaintiff and members of the class seek, pursuant to California Business  
6 & Professions Code § 17203, full restitution on account of the economic injuries  
7 they have suffered to restore any and all monies acquired by Defendants by means of  
8 the unlawful, unfair and fraudulent business practices complained of herein.

9 124. Plaintiff and the Class Members seek appointment of a receiver, as  
10 necessary, to oversee said restitution.

11 125. Plaintiff is entitled to an award of attorneys' fees and costs in  
12 prosecuting this action against Defendants under California Code of Civil Procedure,  
13 Section 1021.5 and other applicable law in part because:

- 14 a. a successful outcome in this action will result in the enforcement of  
15 important rights affecting the public interest by maintaining the  
16 integrity of representations made concerning Defendants' goods and  
17 services;
- 18 b. this action will result in a significant benefit to consumers or a large  
19 class of persons by bringing to a halt unlawful, unfair, deceptive,  
20 and misleading activity and by causing the return of ill-gotten gains  
21 obtained by Defendants;
- 22 c. unless this action is prosecuted, members of a large class of persons  
23 will not recover those monies, and many consumers would not be  
24 aware that they were victimized by Defendants' wrongful acts and  
25 practices;
- 26 d. unless this action is prosecuted, Defendants will continue to mislead  
27 consumers; and  
28

1 e. an award of attorneys' fees and costs is necessary for the prosecution  
 2 of this action and will result in a benefit to each member of the  
 3 Class, and consumers in general.

4 126. Plaintiff and the other members of the putative class also request relief  
 5 as described below.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays as follows:

- 8 a. That this Court assume jurisdiction;
- 9 b. That this Court certify the classes and sub-classes identified herein;
- 10 c. That this Court certify Plaintiff Jancik as a representative of the classes  
 11 and sub-classes identified herein;
- 12 d. That this Court declare Defendant to be in violation of Title III of the  
 13 Americans with Disability Act, 42 U.S.C. §§ 12181, et seq., the Unruh  
 14 Civil Rights Act, Cal. Civ. Code §51, et. seq., and the California  
 15 Disabled Persons Act, Cal. Civ. Code, § 54, et. seq.;
- 16 e. That this Court issue an injunction ordering Defendant to comply with  
 17 the statutes set forth herein;
- 18 f. That this Court award minimum statutory damages, defined as \$4,000  
 19 per incident of discrimination under the Unruh and \$1,000 per incident  
 20 under the CDPA, to Plaintiff and members of the proposed class for  
 21 violations of their civil rights under state law;
- 22 g. That this Court award actual damages in an amount to be determined at  
 23 trial;
- 24 h. That this Court award general damages in an amount to be determined  
 25 at trial;
- 26 i. That this Court award punitive damages in an amount to be determined  
 27 at trial;
- 28 j. That this Court award interest on these sums at the legal rate from the



1 date of each unlawful collection of funds paid to Defendants by  
2 Plaintiff and others similarly situated;

3 k. That this Court award reasonable attorneys' fees and costs pursuant to  
4 federal and state law;

5 l. That this Court award such other and further relief as the Court may  
6 deem necessary or appropriate.

7  
8 DATED: December 24, 2013

MARLIN & SALTZMAN, LLP

9  
10 By: Leslie H. Joyner  
11 Stanley D. Saltzman, Esq.  
12 Christina A. Humphrey, Esq.  
13 Leslie H. Joyner, Esq.  
14 Attorneys for Plaintiff  
15  
16  
17

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands trial of Plaintiff's and the putative class' claims by  
20 jury to the extent authorized by law.  
21

22 DATED: December 24, 2013

MARLIN & SALTZMAN, LLP

23  
24 By: Leslie H. Joyner  
25 Stanley D. Saltzman, Esq.  
26 Christina A. Humphrey, Esq.  
27 Leslie H. Joyner, Esq.  
28 Attorneys for Plaintiff

1 STATE OF CALIFORNIA )  
 2 ) ss.  
 3 COUNTY OF LOS ANGELES )

4 I am employed in the County of Los Angeles, State of California. I am over  
 5 the age of 18 and not a party to the within action. My business address is  
 6 29229 Canwood Street, Suite 208, Agoura Hills, California 91301-1555.

7 On January 13, 2014, I served the foregoing document described as **SECOND**  
 8 **AMENDED COMPLAINT** on all interested parties in said action:

9 ☒ (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at  
 10 Agoura Hills, California with postage thereon fully prepaid.

11 I am "readily familiar" with the firm's practice of collection and processing  
 12 correspondence for mailing. It is deposited with the U.S. Postal Service on  
 13 that same day in the ordinary course of business. I am aware that on motion of  
 14 party served, service is presumed invalid if postal cancellation date or postage  
 15 meter date is more than one day after date of deposit for mailing in affidavit.

16 ☐ (VIA FEDERAL EXPRESS) I caused to have served such document(s) by  
 17 depositing them in the drop box at Agoura Hills, California, for priority  
 18 overnight next day delivery.

19 ☐ (VIA FACSIMILE) I caused such document to be faxed to the persons  
 20 identified with fax numbers on the attached Mailing List.

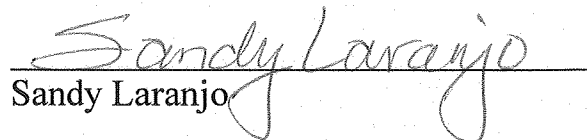
21 ☐ (VIA PERSONAL SERVICE) I delivered such envelope(s) by hand to the  
 22 offices of the addressee.

23 ☐ (VIA E-MAIL) I caused to have such documents sent by electronic service  
 24 [Fed. Rule Civ. Proc. Rule 5(b)(2)(a)] by electronically mailing a true and  
 25 correct copy through Marlin & Saltzman's electronic mail system to the e-mail  
 26 address(s) set forth below, or as stated on the attached service list per  
 27 agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

28 ☐ (STATE) I declare under penalty of perjury under the laws of the State of  
 California that the above is true and correct.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar  
 of this court at whose direction the service was made.

Executed on January 13, 2014, at Agoura Hills, California.

  
 Sandy Laranjo

*Jancik, et al. v. Redbox, et al.*

CASE NO. SACV13-01387-DOC (RNBx)

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